

Message Text

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PAGE 01 NEW DE 07401 050716Z

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ACTION NEA-16

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FM AMEMBASSY NEW DELHI

TO SECSTATE WASHDC PRIORITY 1851

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E.O. 11652: N/A

TAGS: BGEN, IN.

SUBJECT: ARBITRATION AWARD AGAINST FERTILIZER COOPERATION OF INDIA

1. THE LAW FIRM OF TAFT, STETTINIUS AND HOLLISTER, CINCINNATI, OHIO, ACTING FOR IDI MANAGEMENT, INC. (FORMERLY GIRDLER CORPORATION) WROTE COMMERCIAL COUNSELOR DUNCAN-PETERS RECENTLY THAT AN INTERNATIONAL ARBITRATION TRIBUNAL HAS ISSUED AN AWARD IN FAVOR OF ITS CLIENTS IN THE AMOUNT OF US\$302,600.50 AGAINST THE GOI-OWNED FERTILIZER CORPORATION OF INDIA (FCI). SPECIFICALLY, THE CINCINNATI LAW FIRM SOUGHT THE EMBASSY'S ASSISTANCE IN ENCOURAGING THE GOI AND THE FCI TO RECOGNIZE AND PAY THE AWARD WITHOUT RESORT TO FURTHER LITIGATION OR ADOPTION OF EVASIVE TACTICS.

2. THE EMBASSY HAS ADVISED JAMES R. BRIDGELAND, PARTNER OF THE LAW FIRM HANDLING THIS CASE, THAT THE EMBASSY WOULD ENDEAVOR TO ASCERTAIN THE POSITION THAT THE FCI INTENDS TO TAKE IN THE MATTER AND INFORM HIM ACCORDINGLY THROUGH THE DEPARTMENT.

3. THE EMBASSY HAS BEEN INFORMED BY A RELIABLE CONTACT IN THE FCI THAT THE ARBITRATION AWARD IS LIKELY TO BE CHALLENGED BY THE FCI IN THE DELHI HIGH COURT. THE FCI HOUSE COUNSEL FEELS THAT THE FCI HAS A STRONG CASE IN GETTING THE AWARD SET ASIDE. IN SUPPORT OF THIS, THE FCI IS IN THE PROCESS OF OBTAINING THE OPINIONS OF SEVERAL SENIOR INDIAN COUNSELS. THE APPARENT CONTENTION OF THE FCI COUNSEL APPEARS TO BE THAT INASMUCH AS THE

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PAGE 02 NEW DE 07401 050716Z

AWARD DOES NOT PROVIDE THE REASONS FOR THE VARIOUS DECISIONS

THE BASIS ON WHICH THE AWARD HAS BEEN ARRIVED AT IS INCORRECT
IN LAW.

4. INASMUCH AS THIS CASE IS PURELY A COMMERCIAL ARBITRATION
BETWEEN TWO CONTRACTING PARTIES, THE EMBASSY, AFTER CAREFUL
CONSIDERATION, HAS REFRAINED FROM MAKING ANY REPRESENTATIONS
TO THE GOI WITH RESPECT TO THIS MATTER. IN OUR OPINION, SUCH
ACTION CAN BE MISCONSTRUED AS INTERFERENCE AND COULD PROVE
TO BE COUNTERPRODUCTIVE.

5. ACTION REQUESTED: PLEASE ADVISE BRIDGELAND OF THE SUBSTANCE
OF THIS TELEGRAM AND RECOMMEND THAT HE HAVE HIS INDIAN LAW
ASSOCIATES FOLLOW DEVELOPMENTS IN INDIA CLOSELY. SCHNEIDER

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